

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2013 FEB 21 PM 3:49

VERONICA HERSKOVIC

Plaintiff

vs.

GREEN TREE SERVICING, LLC

&

LANDMARK ASSET RECEIVABLES
MANAGEMENT, LLC

Defendant

Case Number:

CIVIL COMPLAINT

13 CV 1180

COMPLAINT AND JURY DEMAND

COMES NOW, Plaintiff, Veronica Herskovic, by and through her undersigned counsel,
Bruce K. Warren, Esquire of Warren Law Group, P.C., complaining of Defendant, and
respectfully avers as follows:

I. INTRODUCTORY STATEMENT

1. Plaintiff, Veronica Herskovic, is an adult natural person and she brings this action
for actual and statutory damages and other relief against Defendant for violations of the Fair
Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA"), which prohibits debt
collectors from engaging in abusive, deceptive and unfair practices.

II. JURISDICTION

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. §
1337.

3. Venue in this District is proper in that Plaintiff maintains a primary residence in this district.

III. PARTIES

4. Plaintiff, Veronica Herskovic, (hereafter, Plaintiff) is an adult natural person residing in Highland Mills, NY. At all times material and relevant hereto, Plaintiff is a “consumer” as defined by the FDCPA, 15 U.S.C. § 1692a (2).

5. Defendant, Green Tree Servicing, LLC (hereafter, Green Tree), at all times relevant hereto, is and was a corporation engaged in the business of collecting consumer debt with a primary address located at 7360 South Kyrene Road, Tempe, AZ 85283.

6. Defendant, Landmark Asset Receivables Management, LLC (hereafter, LARM), at all times relevant hereto, is and was a corporation engaged in the business of collecting consumer debt with a primary address located at 1150 West Grove Pkwy, Suite 110-A, Tempe, AZ 85283.

7. Defendant is engaged in the collection of debts from consumers using the telephone and mail. Defendant, is a “debt collector” as defined by the FDCPA, 15 U.S.C. §1692a(6).

IV. FACTUAL ALLEGATIONS

8. On or about May 30, 2012 Plaintiff received a letter from Defendant Green Tree stating they had acquired this consumer debt from Bank of America. **See EXHIBIT “A” (notice) attached hereto.**

9. The lettering welcomes the Plaintiff, but does not mini-Mirandize the Plaintiff telling her that the Defendant Green Tree is a debt Collector.

10. The Plaintiff is said to owe \$44,606.19.

11. On this letter DLJ Mortgage Capital, Inc. is listed as the current creditor.

12. Nowhere on this letter is Defendant Green Tree listed as a holder on the said alleged consumer debt.

13. On or about June 5, 2012 Plaintiff wrote a letter to the Defendant Green Tree asking them to validate the alleged consumer debt in question. **See EXHIBIT "B" (notice) attached hereto.**

14. On or about August 31, 2012 Plaintiff received a letter from the Defendant Green Tree giving the Plaintiff instructions on how to make payments and where to send them to. **See EXHIBIT "C" (notice) attached hereto.**

15. Defendant ignored the Plaintiff's request and never validated the alleged consumer debt.

16. On or about January 17, 2013 Plaintiff received a letter from Defendant LARM stating they have acquired this alleged consumer debt from Defendant Green Tree. **See EXHIBIT "D" (notice) attached hereto.**

17. On this letter Green Tree Servicing, LLC is now listed as the current creditor.

18. Nowhere on this letter is Defendant LARM listed as a holder on the said alleged consumer debt.

19. The lettering welcomes the Plaintiff, but does not mini-Mirandize the Plaintiff telling her that the Defendant LARM is a debt Collector.

20. Both Defendantst acted in a false, deceptive, misleading and unfair manner when they engaged in conduct the natural consequences of which is to harass, oppress, or abuse such person in connection with the collection of a debt.

21. The Defendants knew or should have known that their actions violated the FDCPA. Additionally, Defendants could have taken the steps necessary to bring their and their agent's actions within compliance of the FDCPA, but neglected to do so and failed to adequately review those actions to insure compliance with the law.

22. At all times pertinent hereto, Defendants were acting by and through their agents, servants and/or employees, who were acting with the scope and course of their employment and under the direct supervision and control of Defendants herein.

23. At all times pertinent hereto, the conduct of both Defendants, as well as their agents, servants and/or employees, was malicious, intentional, willful, reckless, negligent and in wanton disregard for federal and state law and the rights of the Plaintiff herein.

24. As a result of Defendant's, conduct, Plaintiff has sustained actual damages, including, but not limited to, injury to Plaintiff's reputation, invasion of privacy, damage to Plaintiff's credit, out-of-pocket expenses, physical, emotional and mental pain and anguish and pecuniary loss and he will continue to suffer same for an indefinite time in the future, all to his great detriment and loss.

COUNT I – FDCPA

25. The above paragraphs are hereby incorporated herein by reference.

26. At all times relevant hereto, Defendants were attempting to collect an alleged debt which was incurred by Plaintiff for personal, family or household purposes and is a "debt" as defined by 15 U.S.C. § 1692a(5).

27. The foregoing acts and omissions constitute violations of the FDCPA, including but not limited to, violations of:

- §§ 1692d: Any conduct the natural consequence of which is to harass, oppress, or abuse any person
- §§ 1692e: Any other false, deceptive, or misleading representation or means in connection with the debt collection
- §§ 1692e(10): Any false representation or deceptive means to collect a debt or obtain information about a consumer
- §§ 1692e(11): Communication fail to contain the mini-Miranda warning:
“This is an attempt to collect a debt...communication is from a debt collector.”
- §§ 1692f: Any unfair or unconscionable means to collect or attempt to collect the alleged debt
- §§ 1692g(b): Collector must cease collection efforts until debt is validated

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendants for the following:

- a. Actual damages;g
- b. Statutory damages pursuant to 15 U.S.C. § 1692k;
- c. Reasonable attorney’s fees and litigation expenses, plus costs of suit; and
- d. Such additional and further relief as may be appropriate or that the interests of justice require.

V. JURY DEMAND

Plaintiff hereby demands a jury trial as to all issues herein.

Respectfully submitted,

WARREN LAW GROUP, PC

Date: February 1, 2013

BY: 
Bruce K. Warren, Esquire

Warren Law Group, PC
58 Euclid Street
Woodbury, NJ 08096
P: (856)848-4572
F: (856)324-9081
Attorney for Plaintiff

EXHIBIT "A"

green tree



05/30/2012

Green Tree Servicing LLC
7360 South Kyrene Rd.
Tempe, AZ 85283-4583

* 0380366 000000267 76711 0065197

VERONICA HERSKOVIC



RE: Green Tree Servicing LLC* ("Green Tree") Account No. [REDACTED]
Creditor: DLJ Mortgage Capital, Inc.

Dear Valued Customer:

The servicing of your account was transferred from Bank of America to Green Tree on 4/16/2012. We are pleased to welcome you to Green Tree.

As your new servicer for the referenced account, Green Tree is required to inform you of the following important notice regarding your rights under federal law:

AS OF 4/16/2012, YOU OWE \$44,606.19. BECAUSE OF INTEREST, LATE CHARGES, AND OTHER CHARGES THAT MAY VARY FROM DAY TO DAY, THE AMOUNT DUE ON THE DAY YOU PAY MAY BE GREATER. HENCE, IF YOU PAY THE AMOUNT SHOWN ABOVE, AN ADJUSTMENT MAY BE NECESSARY AFTER WE RECEIVE YOUR CHECK, IN WHICH EVENT WE WILL INFORM YOU BEFORE DEPOSITING THE CHECK FOR COLLECTION. FOR FURTHER INFORMATION, CONTACT CUSTOMER SERVICE AT THE ADDRESS OR TOLL-FREE NUMBER LISTED ABOVE.

UNLESS YOU NOTIFY US WITHIN THIRTY (30) DAYS AFTER RECEIVING THIS NOTICE THAT YOU DISPUTE THE VALIDITY OF THIS DEBT, OR ANY PORTION OF THE DEBT, WE WILL ASSUME THAT THE DEBT IS VALID. IF YOU NOTIFY US IN WRITING WITHIN THIRTY (30) DAYS OF RECEIVING THIS NOTICE, WE WILL OBTAIN VERIFICATION OF THE DEBT (OR OBTAIN A COPY OF A JUDGMENT, IF THE DEBT HAS BEEN REDUCED TO JUDGMENT) AND MAIL THE VERIFICATION TO YOU. IN ADDITION, UPON YOUR WRITTEN REQUEST WITHIN THIRTY (30) DAYS AFTER RECEIVING THIS NOTICE, WE WILL ALSO PROVIDE YOU WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, IF DIFFERENT FROM THE CURRENT CREDITOR.

To ensure timely posting of your payments, please send all payments to your new servicer at the address indicated below:

Green Tree
PO Box 94710
Palatine, Illinois 60094-4710

EXHIBIT “B”

June 5, 2012

From:
Veronica Herskovic
[REDACTED]
[REDACTED]

To:
GREEN TREE SERVICING LLC
7360 South Kyrene Rd
Tempe, AZ 85283-4583

RE: Account # [REDACTED]

This letter is lawful notification to GREEN TREE SERVICING LLC, as the first step of due process of law pursuant to the Bill of Rights and the Federal Constitution, in particular Articles I, IV, V, VII, and IX of the Amendments.

Please take Notice that Veronica Herskovic **CONDITIONALLY ACCEPTS YOUR CLAIM UPON BONA FIDE PROOF (in good faith and without deceit) that your claim is lawful and valid.**

Please take lawful notice that in order to effect this **BONA FIDE PROOF**, GREEN TREE SERVICING LLC via a legally authorized representative is lawfully required and hereby demanded to respond point by point in Truth, Fact, and Evidence to each and every item set forth in this correspondence before he or his Authorized Representative can make an offer to settle GREEN TREE SERVICING LLC's alleged claim in this matter.

Please provide the following:

1. A copy of the contract that binds myself, a Natural Person, and GREEN TREE SERVICING LLC, a creature of the State who is defined as an ARTIFICIAL PERSON:
2. PROOF OF CLAIM via certified, notarized, specific, and relevant documents that GREEN TREE SERVICING LLC:
 - a. Has any contract or agreement which lawfully compels this Natural Person to accept and or respond to any communications from GREEN TREE SERVICING LLC.
 - b. Is a lawful and valid party in interest in this matter.
 - c. Is not an unrelated third party.
 - d. Is not an unrelated third party debt collector.
 - e. Did not purchase this alleged debt for an agreed upon cost from an alleged other COMPANY, CORPORATION, or Party.
 - f. Is not acting on its own behalf and/or interests in this instant matter.

Please have your legally authorized representative respond via signed affidavit, under penalty of perjury, and enclose copies of all relevant documents that demonstrate BONA FIDE PROOF OF YOUR CLAIM within 10 days of receipt of this letter, via certified mail.

Your failure to provide a lawfully valid response within 10 days, as stipulated, is GREEN TREE SERVICING LLC and their representatives admission to the fact that you have no BONA FIDE PROOF OF CLAIM in this instant matter which is your lawful, legal and binding agreement with and admission to this fact as true, correct, legal, lawful and binding upon you, in any court, anywhere in America, without your protest or objection or that of those who represent you. Your silence is your acquiescence.

Dated: June 5, 2012

All Rights Reserved,
Respectfully submitted,

By: /s/ Veronica Herskovic
Veronica Herskovic, American Citizen
Authorized Representative
[REDACTED]
[REDACTED]

Sent by certified mail, # 7011 2000 0000 9436 7088

U.S. Postal Service [™]			
CERTIFIED MAIL [™] RECEIPT			
(Domestic Mail Only; No Insurance Coverage Provided)			
For delivery information visit our website at www.usps.com			
TEMPE AZ 85283		OFFICIAL USE	
Postage	\$ 0.45	0063	Postmark Here
Certified Fee	\$2.95	05	
Return Receipt Fee (Endorsement Required)	\$0.00		
Restricted Delivery Fee (Endorsement Required)	\$0.00		
Total Postage & Fees	\$ 3.40	06/08/2012	
Sent To			
Street, Apt. No., or PO Box No.			
City, State, ZIP+4			
TEMPE A.Z. 85283			
PS Form 3800, August 2006 See Reverse for Instructions			

EXHIBIT "C"

relationships that work

green tree

Green Tree Servicing LLC
7360 South Kyrene Rd.
Tempe, AZ 85283-4583



08/31/2012

* 0392793 0000000000 96TLL 0065035
VERONICA HERSKOVIC



RE: Green Tree Servicing LLC* ("Green Tree") Account No. 89979886

Dear VERONICA HERSKOVIC:

I realize problems may occur which make it difficult to meet your monthly obligations. However, ignoring your obligations will not resolve the situation.

Several attempts have been made to contact you concerning the outstanding balance of \$44,606.19** on your above-referenced account. To date, we have not received a call or correspondence from you concerning your debt. In order to work out any type of resolution, we must have your cooperation. Please remit payment to the following addresses:

Wiring Instructions:

ABA: 026009593
Account: [REDACTED]
Account Name: Green Tree Servicing LLC
Bank Name: Bank of America
Bank Address: 150 Broadway Avenue
Bank City: New York
Bank State: NY
Bank Zip: 10038

Overnight Address:

Green Tree
345 St. Peter Street
Attn: Settlements L800
St. Paul, MN 55102

If arrangements are not made to eliminate this balance, I will have no alternative but to consider additional action to collect this balance. I do not want to take this step. Therefore, to avoid any possible accelerated collection activity, please contact us within 10 days of the date of this letter between the hours of 6 a.m. - 7 p.m. Monday - Thursday and 6 a.m. - 12 p.m. Friday MST at 1-877-835-6465.

Sincerely,

Green Tree

GS

Asset Receivables Management

* Green Tree Servicing LLC and related entities, including, for certain loans, in Pennsylvania, Green Tree Consumer Discount Company.

** This is not the amount required to pay off your account. Please contact Customer Service at 1-877-835-6465 if you wish to obtain a payoff quote.

This communication is from a debt collector. It is an attempt to collect a debt, and any information obtained will be used for that purpose.

IMPORTANT NOTICE: We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

Demand Letter 03/30/2011

LTR-01500



EXHIBIT “D”

1150 W. Grove Pkwy Suite 110-A
Tempe, AZ 85283



Landmark Asset Receivables Management LLC

01/17/2013

+ 0412495 000000075 96LMS 0065512

VERONICA HERSKOVIC



Re: Landmark Asset Receivables Management LLC ("Landmark")

Account No.: [REDACTED]

Creditor: Green Tree Servicing LLC

Dear Valued Customer:

Your above-referenced account was transferred from Green Tree Servicing LLC to Landmark on 01/16/2013. We are pleased to welcome you to Landmark.

Landmark is required to inform you of the following important notice regarding your rights under federal law:

AS OF 01/17/2013, YOU OWE \$44,606.19. BECAUSE OF INTEREST, LATE CHARGES, AND OTHER CHARGES THAT MAY VARY FROM DAY TO DAY, THE AMOUNT DUE ON THE DAY YOU PAY MAY BE GREATER. HENCE, IF YOU PAY THE AMOUNT SHOWN ABOVE, AN ADJUSTMENT MAY BE NECESSARY AFTER WE RECEIVE YOUR CHECK, IN WHICH EVENT WE WILL INFORM YOU BEFORE DEPOSITING THE CHECK FOR COLLECTION. FOR FURTHER INFORMATION, CONTACT CUSTOMER SERVICE AT THE BELOW-REFERENCED ADDRESS OR TOLL-FREE NUMBER.

UNLESS YOU NOTIFY US WITHIN THIRTY (30) DAYS AFTER RECEIVING THIS NOTICE THAT YOU DISPUTE THE VALIDITY OF THIS DEBT, OR ANY PORTION OF THE DEBT, WE WILL ASSUME THAT THE DEBT IS VALID. IF YOU NOTIFY US IN WRITING WITHIN THIRTY (30) DAYS OF RECEIVING THIS NOTICE, WE WILL OBTAIN VERIFICATION OF THE DEBT (OR OBTAIN A COPY OF A JUDGMENT, IF THE DEBT HAS BEEN REDUCED TO JUDGMENT) AND MAIL THE VERIFICATION TO YOU. IN ADDITION, UPON YOUR WRITTEN REQUEST WITHIN THIRTY (30) DAYS AFTER RECEIVING THIS NOTICE, WE WILL ALSO PROVIDE YOU WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, IF DIFFERENT FROM THE CURRENT CREDITOR.

To ensure timely posting of your payments, please send all payments to your new servicer at the address indicated below:

**Landmark Asset Receivables Management LLC
1150 W. Grove Pkwy
Suite 110-A
Tempe, AZ 85283**